

**Letter of Findings Number: 01-20140045P
Tax Administration
For Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Tax Administration—Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayers protest the imposition of penalty.

STATEMENT OF FACTS

Taxpayers are married Indiana residents. The Indiana Department of Revenue ("Department") determined that Taxpayers had not properly filed their 2011 Indiana adjusted gross income tax return and so imposed a penalty. Taxpayers protested the imposition of the penalty. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration—Penalty.

DISCUSSION

The Department issued a proposed assessment for penalty on failure to remit a quarterly estimated payment for Taxpayers' 2011 Indiana adjusted gross income tax. Taxpayers protest the imposition of penalty and request a waiver of that penalty.

The Department refers to IC § 6-8.1-10-2.1(d), which states:

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

....

(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2](#)(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(Emphasis added).

Finally, [45 IAC 15-11-2](#)(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

(Emphasis added).

In this case, the Department determined that Taxpayers did not properly file their 2011 Indiana adjusted gross income tax. The Department imposed penalty under IC § 6-8.1-10-2.1. As a result of the protest process, Taxpayers have affirmatively established that they acted reasonably, as required by IC § 6-8.1-10-2.1(d) and [45 IAC 15-11-2](#)(b). The penalty will be waived.

FINDING

Taxpayers' protest is sustained.

Posted: 05/28/2014 by Legislative Services Agency

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